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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/762,772 | 01/22/2004 | Stephen W. Briggs III | BBMED.004A | 3108 |

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EXAMINER

MITCHELL, TEENA KAY

ART UNIT PAPER NUMBER

3743

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/762,772 | Applicant(s) BRIGGS, STEPHEN W. | |
| | Examiner Teena Mitchell | Art Unit 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-10 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 4-7, 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 12 and 17 are objected to because of the following informalities: Claim 12, lines 6 and 7, "...the ring void..." lacks antecedent basis.

Claim 17, line 2, "...the major strap holds..." lacks antecedent basis. Correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

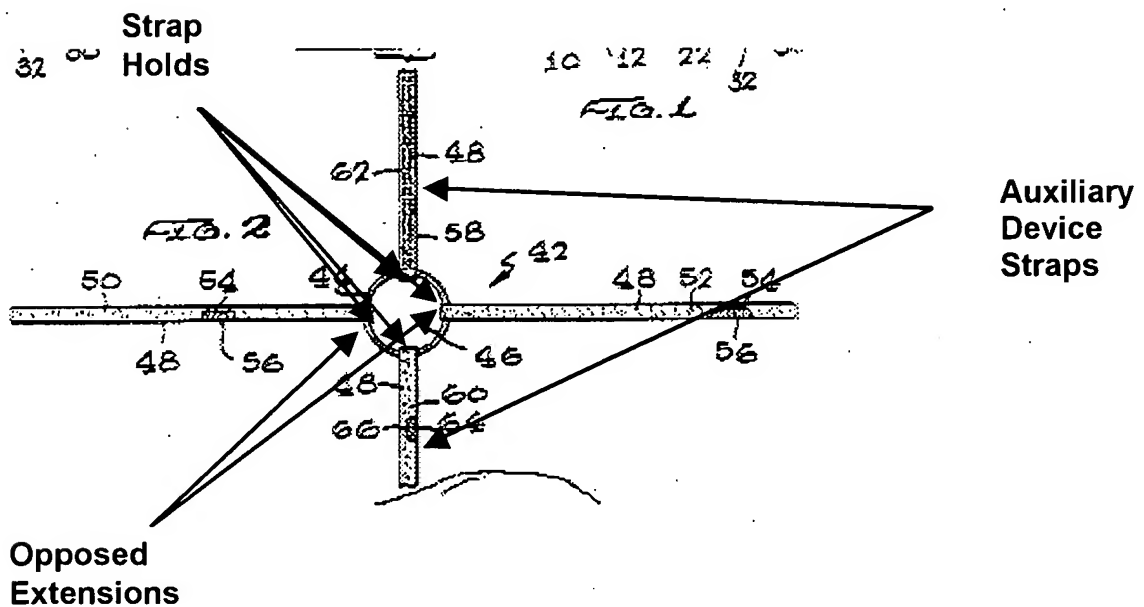
Claims 1-3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briggs, III (5,839,437) in view of Vermeulen et.al. (4,470,176).

Briggs in a securing apparatus for tracheostomy tubes discloses:

- a ring (44) having a pair of opposed extensions defining strap holds (Col. 3, lines 36-48), and further having a pair of secondary strap holds (see illustration of Fig. 2 below); a void (46) within the ring (44) configured to allow passage of a tracheostomy tube (38) through the ring (44);

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- a pair of auxiliary device straps (see illustration of Fig. 2 below) affixed to each of the secondary strap holds, the auxiliary straps configured so that when the tracheostomy tube extends through the ring void (46), the auxiliary straps extend around an auxiliary device (40) that is fit onto the tracheostomy tube (Fig. 5) so as to maintain a maximum spatial relationship between the auxiliary device and the ring (44).



The difference between Briggs and claim 1 is the ring extensions extending away from the void. Vermeulen in a fastener device teaches ring extensions extending away

from the void (Figs. 1-7, the extensions 14, 18', 62, 64, 68, 20, 22) providing a fastening arrangement for joining end portions of strip materials in the fabrication of composite items which facilitates the replacement of individual strips and also provides easily and economically fabricated elements for use in identical pairs as a means of releasably connecting end portions of a plurality of individual strips of flexible material (Col. 1, lines 33-41). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ring of Briggs to employ any well known ring including the ring taught by Vermeulen, doing so would have provided a fastening arrangement for joining end portions of strip materials in the fabrication of composite items which facilitates the replacement of individual strips and also provides easily and economically fabricated elements for use in identical pairs as a means of releasably connecting end portions of a plurality of individual strips of flexible material.

With respect to claim 2, Briggs discloses wherein the auxiliary device straps are configured with fastening elements (Col. 3, lines 54-64) to releasably secure the auxiliary device straps together (Fig. 5).

With respect to claim 3, Briggs discloses wherein the fastening elements comprise hook and loop fasteners (Col. 3, lines 54-64).

With respect to claim 12, Briggs discloses a ring (44) having an aperture (46), a pair of opposed primary strap holds, and a pair of secondary strap holds (see illustration of Fig. 1 above); and a pair of auxiliary device straps affixed to each of the secondary strap holds, the auxiliary straps configured so that, when the tracheostomy tube extends through the ring void, the auxiliary straps can extend around an auxiliary device that is

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fit onto the tracheostomy tube so as to maintain a maximum spatial relationship between the auxiliary device and the ring; wherein a tube accepting portion of the aperture is shaped to generally correspond to a tracheostomy tube so as to allow passage of a tracheostomy tube through the ring; Vermeulen teaches wherein the ring is configured so that a space is defined between each primary strap hold and the tube accepting portion of the aperture so that a strap can be fit onto each of the primary strap holds when the tube accepting portion of the aperture is occupied by a tracheostomy tube (Figs. 1-7).

Allowable Subject Matter

Claims 4, 5-7, 13-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8-10 and 18-20 are allowable over the prior art of record.

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. Applicant further argues that the ring of '437 patent can only be used with certain compatible neck bands such may be true but the limitations are not in the claims. Patent '437 does disclose strap holds note illustration of Fig. 1 above, the examiner is broadly reading where the straps are looped on the ring to be readable upon strap holds.

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Applicant's arguments, see pages 6-8, filed 5/9/05, with respect to the ring being secured to the tracheostomy collar and the major and minor axis have been fully considered and are persuasive. The rejection of claims 4-7 has been withdrawn.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

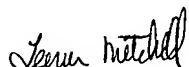
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however on a flexible schedule.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Examiner
Art Unit 3743
July 13, 2005